



April 7, 2009

**SUBJECT: Amendment of Outside Counsel Agreement for Fair Oaks
Affordable Senior Housing Matters****REPORT IN BRIEF**

Approval is requested for a Second Amendment to a contract with the law firm of Stein & Lubin LLP, to assist the City Attorney and the Housing Department with negotiations and document drafting and review pertaining to the Fair Oaks Affordable Senior Housing Project. The Project has turned out to be very complex and to require substantial involvement from both the City Attorney and outside counsel. The current contract provides for fees not to exceed \$100,000 and this second amendment is required to reflect the actual time spent on the Project and legal fees that exceed the current cap.

BACKGROUND

Paul Niewiadomski, a specialist in the area of commercial real estate with expertise in development, acquisitions and dispositions, financing, leasing, and construction, and partner of the law firm of Stein & Lubin LLP, was retained by the City Attorney under Section 908 of the City Charter to represent the City and provide legal services, consultation and advice on issues and matters pertaining to the Fair Oaks Senior Affordable Housing Project. This assistance has been essential in negotiating and drafting the Ground Lease and Development and Disposition Agreement. Due to the involvement of three parties (County, City, and Mid-Pen), the requirement to divide the project into two separate phases to maximize financing opportunities and allow for the additional contribution of \$500,000 from Mid-Pen, and some complex environmental negotiation because of a County clinic generator, the legal work on this project was complex and time-sensitive.

The City's current contract with Stein & Lubin LLP commenced on January 1, 2008, in an amount not to exceed \$50,000. It was then amended on October 22, 2008 to increase the contract amount to \$100,000 and extend the contract to December 31, 2010. To date, \$91,656.67 has been expended, leaving \$8,343.33 available. The current invoice submitted for payment from Stein & Lubin LLP exceeds the amount of funds available.

DISCUSSION

The City required, and will continue to require on a more limited basis, the specialized legal services of Paul Niewiadomski and Stein & Lubin LLP on

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matters pertaining to the Fair Oaks Affordable Senior Housing Project. Payment for legal work provided to date and continuation of these services will require an amendment to the professional services contract for an additional amount of \$40,000 to cover on-going and anticipated legal services under the current contract. The City Attorney finds the billing rate for this firm to be highly competitive with other legal firms providing similar services.

FISCAL IMPACT

Total cost for a second amendment of this contract for legal services will not exceed \$140,000. Funds are available from the Housing Mitigation Fund for the Fair Oaks Affordable Senior Housing Project and no general funds will be allocated.

PUBLIC CONTACT

Public contact was made through posting of the agenda on the City's official notice bulletin board, posting of the agenda and report on the City's web page, and the availability of the report in the Library and the City Clerk's office.

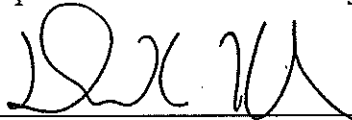
ALTERNATIVES

1. Approve a second amendment to increase the contract with the law firm of Stein & Lubin LLP in an amount not to exceed \$140,000.
2. Do not approve a second amendment to the contract with Stein & Lubin LLP.

RECOMMENDATION

It is recommended that Council approve a Second Amendment to the Outside Counsel Services Agreement with Stein & Lubin LLP for legal services in an additional amount not to exceed \$140,000.

Prepared and reviewed by:



David E. Kahn, City Attorney
City Attorney's Office

Attachments:

Attachment A – Draft Second Amendment to Outside Counsel Agreement

ATTACHMENT A

SECOND AMENDMENT TO OUTSIDE COUNSEL SERVICES AGREEMENT BETWEEN THE CITY OF SUNNYVALE AND STEIN & LUBIN, LLP

THE OUTSIDE COUNSEL SERVICES AGREEMENT commencing January 1, 2008, by and between the CITY OF SUNNYVALE, a municipal corporation ("City") and STEIN & LUBIN, LLP ("Outside Counsel") for the purpose of providing legal advice and representation related to drafting and negotiation of the Ground Lease, Development and Disposition Agreement and related tasks as requested for the Fair Oaks Affordable Senior Housing Project, is hereby amended, effective _____, 2009, as to Section 4.0, as follows:

1. Section 4.0 is hereby amended to read as follows:

4.0 COMPENSATION, REIMBURSEMENT AND METHOD OF PAYMENTS.

4.1 Compensation. Fees for all legal services provided hereunder shall be charged in accordance with Exhibit "A" which is attached and incorporated by reference. Exhibit "A" may be amended, from time to time, to alter fees and charges applicable hereto provided that a letter agreement is duly signed and approved by the City Attorney. The total amount of fees and expenses shall not exceed \$140,000.00.

2. Except as amended above, all other terms and conditions of the Agreement commencing January 1, 2008, shall remain in effect.

IN WITNESS WHEREOF, City and Outside Counsel have executed this Second Amendment to Outside Counsel Services Agreement.

Dated: _____, 2009

Dated: _____, 2009

CITY OF SUNNYVALE
A Municipal Corporation

STEIN & LUBIN, LLP

By _____
David E. Kahn, City Attorney

By _____
Paul J. Niewiadomski, Partner

EXHIBIT A

RATE SCHEDULE

A. HOURLY RATES FOR LEGAL PERSONNEL

Paul Niewiadomski:	\$325
Partners:	\$340 to \$625
Of Counsel:	\$300 to \$350
Associates:	\$230 to \$325
Legal Assistants:	\$115 to \$160

B. STANDARD CHARGES

We charge for our time in units of .10 hours.

C. COSTS AND EXPENSES

In-house photocopying	\$.25/page
Mileage	\$.485/mile
Facsimile	\$.25/page

All other costs will be charged at our actual cost.

D. SUBJECT TO CHANGE

We normally increase our hourly rates annually as of November 1 and our invoices will reflect those increased rates should they occur. If you decline to pay any increased rates, we will have the right to withdraw as your lawyers.